

**38 CFR Part 17****RIN 2900-AQ58****Collection or Recovery by VA for Humanitarian Care or Services and for Certain Other Care and Services**

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with a minor technical change, a proposed rule to revise its regulations concerning reimbursement rates for health care that VA provides to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries. This rulemaking revises several medical regulations to be consistent with applicable law, to remove obsolete provisions, and to clarify the provision of VA health care to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Debra Vathauer, Office of Finance, Revenue Operations, Payer Relations and Services, Rates and Charges (104RO1), Veterans Health Administration, Department of Veterans Affairs, 128 Bingham Road, Suite 1000, Asheville, NC 28806; telephone: 608-821-7346 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On 29 November 2022 VA published a proposed rule in the Federal Register that would revise its regulations concerning reimbursement rates for health care that VA provides to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries. Specifically, this rulemaking would revise provisions of VA regulations and make them consistent with applicable law along with removing obsolete provisions. These revisions would clarify VA regulations related to the provision of VA health care to individuals who are not otherwise eligible for such care as veterans or other VA beneficiaries, and it would not substantively affect the provision of health care to eligible veterans or other VA beneficiaries.

VA provided a 60-day comment period, which ended on January 30, 2023. VA received one comment on the proposed rule. This comment supported the proposed rule, and we thank the commenter for their comment.

Based on the rationale set forth in the proposed rule, VA is adopting the proposed rule with a minor technical change. To comply with Federal Register drafting practices, we are making a minor change to the language proposed in 38 CFR 17.102 to replace the term “below.” with “as follows:”. These changes have no substantive impact on provision of benefits or services to veterans.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both

costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This final rule will affect only individuals and other Federal agencies. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Assistance Listing

The Assistance Listing program numbers and titles for the programs affected by this document are Veterans Domiciliary Care; 64.011 - Veterans Dental Care; 64.012 - Veterans Prescription Service; 64.013 - Veterans Prosthetic Appliances; 64.014 - Veterans State Domiciliary Care; 64.015 - Veterans State Nursing Home Care; 64.026 - Veterans State Adult Day Health Care; 64.029 - Purchase Care Program; 64.033 - VA Supportive Services for Veteran Families Program; 64.039 - CHAMPVA; 64.040 - VHA Inpatient Medicine; 64.041 - VHA Outpatient Specialty Care; 64.042 - VHA Inpatient Surgery; 64.043 - VHA Mental Health Residential; 64.044 - VHA Home Care; 64.045 - VHA Outpatient Ancillary Services; 64.046 - VHA Inpatient Psychiatry; 64.047 - VHA Primary Care; 64.048 - VHA Mental Health clinics; 64.049 - VHA Community Living Center; 64.050 - VHA Diagnostic Care; 64.053.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Health care, Health facilities, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 3, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,
Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 is amended by adding entries for 17.43, 17.44, 17.86, and 17.102 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.43 also issued under 38 U.S.C. 109, 1784, 8111, and 8153.

Section 17.44 also issued under E.O. 10122, 15 FR 2173, 3 CFR, 1949-1953 Comp., p. 313, E.O. 10400, 17 FR 8648, 3 CFR, 1949-1953 Comp., p. 900, and E.O. 11733, 38 FR 20431, 3 CFR, 1971-1975 Comp., p. 792.

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Section 17.86 also issued under 38 U.S.C. 1785.

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Section 17.102 also issued under 38 U.S.C. 109, 1711, 1729, 1784, 1784A, 1785, 8111, 8153.

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§ 17.43 [Amended]

2. Amend § 17.43 by removing paragraph (b)(3).

3. Amend § 17.44 by revising paragraph (a) to read as follows:

§ 17.44 Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

* * * * *

(a) Persons defined in this section who are members or former members of the active United States Armed Forces must agree to pay the rate set by the Secretary of Veterans Affairs as prescribed in § 17.102(c), except that no charge will be made for

those persons who are members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now NOAA, and enlisted personnel of the Army, Navy, Marine Corps, Air Force, and Space Force.

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4. Amend § 17.86 by:

- a. Revising paragraph (e); and
- b. Removing the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 17.86 Provision of hospital care and medical services during certain disasters and emergencies under 38 U.S.C. 1785.

* * * * *

(e) The cost of care for medical care and services provided under this section will be determined in accordance with the following:

(1) If the care is provided to an officer or employee of a non-VA Federal agency VA will charge the rate agreed upon by the Secretary and the head of such department or agency or the Secretary concerned. If no such rate has been agreed to, VA will charge the Inter-Agency Rate as prescribed in § 17.102(c).

(2) If the care is provided to a member of the Armed Forces VA will charge the rate agreed upon by the Secretary and the head of such branch or the Secretary concerned. If no such rate has been agreed to, VA will charge the Inter-Agency Rate as prescribed in § 17.102(c).

(3) If the care is authorized under a sharing agreement as described in 38 U.S.C. 8111 or 8153 or § 17.240, VA will charge the rate determined in accordance with the sharing agreement.

(4) If the care is provided to an individual who is responsible for the cost of the care, VA will charge the Cost-Based Rate as prescribed in § 17.102(c). Individuals will

be responsible for the cost of care or services if mandated by Federal law (including applicable Appropriations Acts) or when the cost of care or services is not reimbursed by other-than-VA Federal departments or agencies.

* * * * *

5. Revise § 17.102 to read as follows:

§ 17.102 Charges for care or services.

Subject to the methodology set forth in paragraph (c) of this section, and notwithstanding the provisions of § 17.101, VA shall charge for VA care and services provided in the circumstances described as follows:

(a) For hospital care or medical services provided:

(1) As a humanitarian service in a medical emergency in accordance with 38 U.S.C. 1784 or 38 U.S.C. 1784A;

(2) During and immediately following a disaster or emergency in accordance with 38 U.S.C. 1785 and § 17.86;

(3) While attending a national convention of an organization recognized under 38 U.S.C. 5902, for emergency medical treatment, in accordance with 38 U.S.C. 1711;

(4) In error, on the basis of eligibility as a non-veteran recipient of VA hospital care and medical services under title 38 U.S.C., and such an individual subsequently is determined not to have been eligible for such care or services;

(5) To a beneficiary of the Department of Defense or other Federal agency, to include for inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty, a beneficiary or designee of any other Federal agency, and members or former members of a uniformed service who are entitled to retired or retainer pay, or equivalent pay; or

(6) To a retiree of the uniformed services with a chronic disability for hospital care identified in Executive Orders 10122, 10400, and 11733 as well as § 17.44.

(b) For hospital care, medical services, domiciliary care, or nursing home care provided:

(1) In error, on the basis of eligibility for such care and services as a veteran under §§ 17.34, 17.36, or 17.37, and such an individual was subsequently determined not to have been eligible for such care or services.

(2) To a discharged member of the armed forces of a nation allied with the United States in World War I or World War II in accordance with 38 U.S.C. 109.

(3) Under a sharing agreement in accordance with 38 U.S.C. 8111 or 8153 and § 17.240.

(4) Under any other provision of law that authorizes VA to provide care.

(c) Unless rates or charges are otherwise established in contract, in a sharing agreement, or under Federal law, VA will charge under this section at rates based on the VHA Office of Finance Managerial Cost Accounting (MCA) Cost Reports, which sets forth the actual basic costs and per diem rates by type of inpatient care, and actual basic costs and rates for outpatient care visits. Factors for depreciation of buildings and equipment and Central Office overhead are added, based on accounting manual instructions. Additional factors are added for interest on capital investment and for standard fringe benefit costs covering government employee retirement and disability costs. The VHA Office of Finance MCA Cost Reports are used to determine two separate rates: one rate is the general Cost-Based Rate and the other rate is the Inter-Agency Rate. These rates are published annually by VA on the internet site of the Veterans Health Administration Office of Community Care's website at https://www.va.gov/communitycare/revenue_ops/payer_rates.asp.

(d) The rates for prescription drugs that VA furnishes not administered during treatment are based on the actual cost of the drug plus a national average of VA administrative costs as described in § 17.101(m).

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